UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

NIGHT BOX

UNITED	STATES	OF	AMERICA,	

AUG Q 8 2006

Plaintiff,

CLARENCE MADDOX

v.

CIVIL ACTION NO.

UNIVERSITY OF MIAMI,

Defendant.

CIV-JORDAN

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States, acting at the request of the United States Army, through the undersigned attorneys, files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action, brought against the University of Miami ("Defendant" or "the University") under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 - 9675. The United States Army Corps of Engineers responded to releases and threatened releases of radionuclides buried at a location in Perrine, Dade County, Florida (the "Site"). Plaintiff seeks to recover costs incurred, and to obtain a declaratory judgment as to liability for costs to be incurred, for responding to the releases and threatened releases of the hazardous substances.

JURISDICTION AND VENUE

- 2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 (Federal question), 1345 (United States as plaintiff), and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) (Jurisdiction; venue).
- 3. Venue is proper in the Southern District of Florida, pursuant to 28 U.S.C. §§ 89(c) (Southern District of Florida includes Dade County) and 1391(b) (Venue generally), and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) (Jurisdiction; venue), because it is the judicial district in which the Defendant is located, in which the Site is located, and in which the releases of hazardous substance occurred.

PARTIES

- 4. The University is a corporation with its principal place of business in Coral Gables, Dade County, Florida. The University is a "person" within the meaning of Section 101 of CERCLA, 42 U.S.C. 9601(21).
- 5. The Army is authorized to perform response actions under CERCLA on Army-owned land. Executive Order 12,580 (January 23, 1987). At the time of the response actions, the Army owned the Site.
- 6. Authority to bring this action on behalf of the United States is vested in the Department of Justice pursuant to 28 U.S.C. §§ 516 (Conduct of litigation reserved to Department of

Justice), and 519 (Supervision of litigation), and Executive Order 12,580 § 6 (January 23, 1987).

ALLEGATIONS

- 7. The Site is located in Perrine, Dade County, Florida, on land that was once a parcel of the Richmond Naval Air Station.
 - 8. The University is the current owner of the Site.
- 9. From approximately 1946 through 1966, the University rented the Site from the United States, under a series of leases and permits. From approximately 1946 through 1966, the University used the Site for research. The Site included a laboratory building. From approximately 1946 through 1966, the University conducted medical and biological research using radioactive materials.
- 10. From approximately 1946 through 1966, the University directed the workings of, managed, or conducted the affairs of the Site, including operations related to disposal of waste. At some or all times between 1946 through 1966, the University was an "operator" of the Site, within the meaning of section 101(20) of CERCLA, 42 U.S.C. §§ 9601(20).
- 11. During some or all of the time between approximately 1946 through 1966, the University used the following at the Site: Carbon (C-14), Cesium (Cs-137) Cobalt (Co-60), Zinc (Zn-65), tritium (H-3), Iron (Fe-59), Iodine (I-131), Chromium (Cr-51), and Sulfur (S-35). Each material in the preceding sentence is a

radionuclide, and each is a "hazardous substance" within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4.

- 12. "Hazardous substances" within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, came to be located at the Site.
- 13. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 14. During some or all of the time between approximately 1946 through 1966, the University disposed of radionuclides by burying them in trenches at the Site, and the University disposed of radiated animal carcasses, derived from radiological experiments, by burying them in trenches at the Site.
- 15. For at least some of the time between 1946 through 1966, hazardous substances were discharged, deposited, injected, dumped, spilled, leaked, or placed into or on land or water at the Site so that such hazardous substances could have entered the environment or been emitted into the air or discharged into any waters, including ground waters.
- 16. For at least some of the time between 1946 through 1966, there was a "disposal" of hazardous substances at the Site, within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29).

- 17. Hazardous substances at the Site have been pumped, poured, emitted, emptied, discharged, dumped, or injected, or otherwise spilled, leaked, escaped or leached, into surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States.
- 18. There has been a "release," as defined by Section 101(22) of CERCLA, 42 U.S.C. 9601(22), or a threat of release, of hazardous substances at the Site.
- 19. As a result of the release or threat of release of hazardous substances from the Site, the United States has incurred and expects to incur "response" costs, as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).
- 20. In June and July of 1985, a radiological survey of the Site showed that cesium-137, cobalt-60, Hydrogen-3 and carbon-14 were present at the Site. A geophysical survey performed in June of 2001 located twelve trenches that included metallic material.
- 21. The Army Corps of Engineers selected a removal action in response to the release or threat of release of hazardous substances at the site.
- 22. The United States has incurred costs of response actions at the Site, within the meaning of Sections 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), (25), and may incur future costs in response to the release and threatened release into the environment of hazardous substances.

- 23. The response actions taken by the Army Corps of Engineers were not inconsistent with the National Contingency Plan.
- 24. The United States has incurred approximately \$763,336.66 in response costs, and expects to continue to incur costs. The University has not reimbursed the United States for any portion of these costs.

CLAIM FOR RELIEF

- 25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.
- 26. The University is liable as a "person who at the time of disposal of hazardous substances owned or operated" the Site, under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
- 27. Pursuant to Section 107(a)(2)(A) of CERCLA, the
 Defendant is liable for "all costs of removal or remedial action
 incurred by the United States . . . not inconsistent with the
 national contingency plan." 42 U.S.C. § 9607(a)(2)(A).
- 28. Pursuant to Section 113(g)(2) of CERCLA, 42, U.S.C. § 9613(g)(2), the Defendant is liable for a "declaratory judgment on liability for response costs . . . that will be binding on any subsequent action or actions to recover further response costs."

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court:

- 1. Award Plaintiff a judgment against the Defendant for all costs incurred in connection with the Site, plus interest;
- 2. Pursuant to Section 113(g)(2) of CERCLA, 42, U.S.C. § 9613(g)(2), enter a "declaratory judgment on liability for response costs . . . that will be binding on any subsequent action or actions to recover further response costs."
- 3. Grant the United States such other relief as this Court may deem appropriate.

Respectfully submitted,

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